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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,538	04/20/2006	Terence Alexander Bengte		4438

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MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN, VA 22102-3833

EXAMINER
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WOMACK, DOMINIQUE A

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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01/08/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milestockbridge.com  
sstiles@milestockbridge.com

### Office Action Summary

**Application No.**

10/576,538

**Applicant(s)**

BENGE ET AL.

**Examiner**

DOMINIQUE WOMACK

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Claims 1-15 are pending. Claims 13-15 are newly added. Applicant's amendments filed on 9/18/2009 have been acknowledged.

### *Rejections*

2. Any rejections and/or objections made in the previous office action, dated March 18, 2009, and not below are hereby withdrawn.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5, 9-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by **Diamond et al. [US Pat No 5,804,237]**.

5. Regarding claims 1 and 14, Diamond discloses a pressurized can (Figures 2a-2c) comprising a sealed vessel (Fig 2b), a bead (Fig. 2a, #23), a product confined within a sealed vessel defining a headspace (Fig. 2b-2d & col. 5, lines 10-32), wherein headspace in fluid communication with bead #23. Figures 2a-2c show a can end #20 where the height of the headspace is higher at bead #23

than at concave surface #21. The bead #23 is interpreted to read on the claimed access region. The concave surface #21 is interpreted to read on the portion of the sealed vessel that helps to draw the product away from the access region and provide a meniscus jump between the maintaining means and the product surface.

6. Regarding claims 2 and 3, the concave surface (Fig. 2a-2c, #21) is interpreted to read on the claimed attraction feature.

7. Regarding claims 5 and 10-11, Diamond discloses in Figure 2a a sealed vessel that comprises an a body (#22) having an opening for inserting a product and a cover (#22) that is arranged to seal and cover the opening after the product is inserted.

8. Regarding claim 9, Diamond discloses a process for manufacturing a pressurized can comprising

- a. Taking an empty can;
- b. Filling it with a sterilized food; and
- c. Seaming the can end onto the can body (col. 5, lines 10-20).

9. The can is pressurized with liquid nitrogen (col. 4, lines 13-19 and col. 5, lines 21-32).

10. The cover has a design that maximized the height of the headspace at the point of first opening as shown in figures 2a-2c. The concave surface #21 is interpreted to read on the portion of the sealed vessel that helps to draw the product away from the access region.

11. **Claims 7-8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Welty et al. [US Pat No. 3,127,049].**

12. Regarding claim 7, Welty discloses a simplified arrangement for protecting a pressure-filled vessel against rupture due to excessive pressure. Welty discloses a container comprising cams that

formed from strips of metal (fig. 2-3, #22) which are suitably contoured or bent to fit snugly around the curvature of the outer surface of projection (#11). The strips are formed at one end with an integral #23 which is rigidly welded to the metal of the wall and the other end of the strip is bent downwardly as shown at #24 and this other end portion is also rigidly welded to the wall of the container (col.2, line 69- col. 3, line 10).

13. Regarding claim 8, Welty discloses cam portions that insure that the sealing ring will be properly compressed before the lugs enter onto the slightly inclined locking portions (fig. 6-9; col. 3, lines 70-75). They also have the further function of retaining the cap against being clown upward at time of removal by any residual gas pressure which may be in the container by allowing the lugs to raise a substantial distance to the entry portions, the sealing ring is fully released to allow the instantaneous release of any such residual pressure (col. 4, lines 1-10).

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
17. **Claims 4, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. [US Pat No 5,804,237] in view of Rayzal [US Pat No 3,814,279].**
18. Diamond is relied upon as above with respect to claim 3.
19. Regarding claims 4 and 15, Diamond fails to teach a cover wherein the attraction feature is defined by a series of progressively deepening beads, which are arranged to follow the form of a dome extending towards the inside of the sealed vessel.
20. Regarding claims 4 and 15, Rayzal discloses a lid for a metal can (Figure 4) that has progressively deepening steps that form a concave curve (col. 4, lines 21-24). Rayzal discloses that a lid of this design does not pop suddenly during the sterilization process (col. 3, lines 35-37).
21. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the lid of Rayzal with the can body of Diamond in order to a sealed can. One of ordinary skill in the art would be motivated to form the sealed can with the lid of Rayzal because the lid of Rayzal does not pop suddenly during the sterilization process.

22. Regarding claim 12, Diamond discloses in Figure 2a a sealed vessel that comprises an a body (#22) having an opening for inserting a product and a cover (#22) that is arranged to seal and cover the opening after the product is inserted.

23. **Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. [US Pat No 5,804,237] in view of Wobser [US Pat No 5,135,124].**

24. Diamond is relied upon as above with respect to claim 5.

25. Diamond fails to teach a cover and can body in a screw thread arrangement and wherein the screw thread arrangement is adapted to allow the cover to be lifted relative to the body before the can is allowed to vent to atmospheric pressure.

26. Wobser discloses a container and cover with a screw thread arrangement. The arrangement disclosed by Wobser allows for the cover to be rotated relative to the container a predetermined distance and then the internal pressure within the container is vented (col. 4, lines 35-46). The arrangement prevents the removal of the cap during the venting process which ensures the cap will not become a projectile (col. 4, lines 46-50).

27. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use screw thread arrangement of Wobser in the construction of the sealed can of Diamond in order to provide a can wherein the can is vented before the cover is completely removed. One of ordinary skill in the art would be motivated to provide a can wherein the can is vented before the cover is completely removed because this type of can removes the dangers involved with the cover becoming a projectile during venting.

***Response to Arguments***

29. Applicant's arguments filed 9/18/2009 have been fully considered but they are not persuasive. Regarding claim 1, applicant argues that US Patent No 5,804,237 to Diamond does not teach applicant's claimed structure. Applicant argues that there is no mention in the disclosure of Diamond that the can end is acting to draw the product away from the access region. However, Diamond discloses the same general structure that applicant discloses and claims, such as the headspace, so it is considered to be capable drawing the product away from the access region and thereby solving the same problem. While Diamond may not state this function, the structure of the can is similar. Applicant has not offered any substantive argument that the article of Diamond would not be able to perform a similar function. Applicant argues that the figures are not to scale. It appears that the general shape of having a headspace is what makes the function of drawing product possible. It is not clear that any specific scale would impact this function. Additionally, there are no specific notations of scale in the claims.

30. Furthermore, in response to applicant's argument that Diamond does not solve the same problem or that the object of the invention is different, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

31. Applicant's amendment to claims 7 and 8 have overcome the previous rejection over Gueritey. However, the new claim limitations necessitated a new search resulting in a new rejection over Welty.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571) 270-7366. The examiner can normally be reached on Monday-Thursday, 9:30am-6:00pm.
33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
34. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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35. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./  
Dominique Womack  
Examiner, Art Unit 1794

30 December 2009

/Jennifer McNeil/  
Supervisory Patent Examiner, Art Unit 1794